

## **REMARKS**

Reconsideration of this application in light of the remarks and the attached Declaration is respectfully requested.

### **I. Entry of This Response and Accompanying Declaration After Final**

This response and Declaration should be entered as it responds to arguments put forth in the Advisory Action for the first time, it clarifies the commonly accepted meaning of terms in art for appeal, and thus places the application in better condition for appeal. Applicant's could not have foreseen the need for the evidence in the current Declaration, since the Final Action did not specifically point out that EPDM was being cited as a "thermoplastic rubber," and it was believed that the meaning of "exclusive of" was clear.

### **II. Rejections Under 35 U.S.C. § 102 and 103**

The Advisory Action states that "applicants fail to recognize that the EPDM rubbers disclosed in Bruck et al. meets the claimed requirement 'thermoplastic rubber.' " As explained in the Declaration, EPDM is not a thermoplastic rubber. Accordingly, a prima facie case of unpatentability has not been made for this reason.

Regarding claims 1 and 20, which require an antidegradant, the Advisory Action states that Bataille clearly discloses the incorporation of waxes. However, this disclosure is only in the Background section of Bataille, and there is nothing to relate the antidegradants taught in the background with the disclosed invention of Bataille, which allegedly contains the other relevant elements of the claims. Furthermore, the reference as a whole teaches away from the use of antidegradants, as explained in the previous response. The law requires that the reference as a whole must be considered. MPEP 2142. A portion of the reference discussing the prior art and

its deficiencies cannot be considered part of the disclosure relating to the invention in the reference, particularly when the reference teaches away from this combination.

Furthermore, despite the non-entry of the amendment after final, the Advisory Action failed to respond to the arguments regarding the thioether requirement of claim 2. Thus, dependent claim 2 is believed to be in condition for allowance.

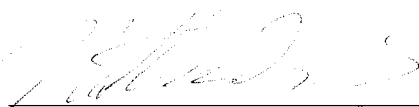
Finally, regarding claim 16, it is clearly erroneous to suggest that “The rubber composition of claim 1, wherein the composition is exclusive of an alkali metal salt of an alkylsulphonic or alkylsulphuric acid,” means that the rubber composition excludes everything but “an alkali metal salt of an alkylsulphonic or alkylsulphuric acid.” The term “exclusive of” clearly means “not including.” This is supported by the attached dictionary definition.

### **III. Conclusion**

For the foregoing reasons, the claims are believed to be in condition for allowance and allowance is respectfully requested.

Respectfully submitted,

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Nathan T. Lewis  
Registration No. 56,218  
Jones Day  
North Point, 901 Lakeside Avenue  
Cleveland, Ohio 44114  
(216) 586-7078

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### **exclusive of**

*prep.*

Not including or considering: *bought the house, exclusive of the outbuildings.*

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